

CITIES AND TOWNS - Municipal court judge authorized to grant time-pay bail bonds;
CONSTITUTIONS - Municipal court judge authorized to grant time-pay bail bonds;
COURTS, CITY - Municipal court judge authorized to grant time-pay bail bonds;
JUDGES - Municipal court judge authorized to grant time-pay bail bonds;
PRISONERS - Municipal court judge authorized to grant time-pay bail bonds;
STATUTES - Municipal court judge authorized by law to grant time-pay bail bonds;
STATUTORY CONSTRUCTION - Construing plain meaning of words of statute;
SURETY - Municipal court judge authorized to grant time-pay bail bonds;
MONTANA CODE ANNOTATED - Sections 46-9-102(1), -106, -108, -111, -301, -301(4), (6), -302, -401, -401(1)(a), (2);
MONTANA CONSTITUTION - Article II, Section 21;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 59 (1986).

HELD: The Montana Constitution and Montana law authorize a municipal court judge to release a defendant on a time-pay bail bond, defined as a bond in an amount set by the judge to be paid in installments.

May 16, 2002

Mr. Paul J. Luwe
Bozeman City Attorney
P.O. Box 1230
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Dear Mr. Luwe:

You have requested my opinion concerning the following issue:

Whether the Montana Constitution and Montana law authorize a municipal court judge to release a defendant on a time-pay bail bond, defined as a bond in an amount set by the judge to be paid in installments?

As I understand the time-pay bail bond system used by the municipal court in Bozeman, the court sets the amount of the bail and allows the defendant to make payments in monthly or

weekly installments. The court sets the frequency and amount of the installment payments to correspond with the court's requirement that the defendant pay the full bail amount before the date of the defendant's trial.

The Montana Constitution provides that all persons "shall be bailable for sufficient sureties," except for those persons who face charges where death is a possible punishment. Art. II, § 21. See also Mont. Code Ann. § 46-9-102(1) (same). The Bozeman municipal court's system of granting time-pay bail bonds to criminal defendants promotes the constitutional policy of providing bail, except in capital cases. State v. Rodriguez, 192 Mont. 411, 628 P.2d 280 (1981) (announcing policy of closely scrutinizing a cash bail requirement).

Thus, except in capital cases, the court must release a defendant upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community and any person. Mont. Code Ann. § 46-9-106. These same themes of ensuring the appearance of the defendant and protecting the safety of the community appear throughout chapter 9 of Title 46. For example, the court may impose any reasonable conditions that will ensure the defendant's appearance or ensure the safety of the community. Id., § 46-9-108. In fact, these conditions may include release of the defendant upon the defendant's personal recognizance "subject to conditions as the court may reasonably prescribe to ensure his appearance when required." Id., § 46-9-111.

If the court finds some form of bail necessary, however, Mont. Code Ann. § 46-9-301, provides more specific factors for a court to consider. These factors include, among other matters not related to the safety of the victim and the community, that the amount shall be "not oppressive," and that the amount shall be "considerate of the financial ability of the accused." Id., §§ 46-9-301(4) and (6). The time-pay bail bonds system comports with these requirements.

The sole question appears to be, therefore, whether such a time-pay bail bonds system conflicts with the forms of bail specifically authorized under Mont. Code Ann. § 46-9-401. Mont. Code Ann. § 46-9-401 authorizes a party to furnish bail in the form of (1) cash, (2) real estate, (3) a written undertaking; and (4) a commercial surety bond. Siroky v. Richland County, 271 Mont. 67, 894 P.2d 309 (1995). Regardless of the form of bail, the amount of bond must ensure the defendant's appearance at all times through the court proceedings. Id., § 46-9-401(2).

The time-pay bail bond system would have to fall within "cash," as used in Mont. Code Ann. § 46-9-401(1)(a). Specifically, this subsection states, in pertinent part, that bail may be furnished "by a deposit with the court of an amount equal to the required bail of cash" Id. This same subsection affords the court discretion to accept some forms of personal property as bond in lieu of cash. Id. The time-pay bail bond system requires the defendant to pay "cash" for the bond, albeit in installments paid over a period of time.

Nowhere does the statute state, however, the precise amount of cash that must be posted as bond for a particular offense or the time period within which it must be paid. Indeed, the court has the authority, pursuant to Mont. Code Ann. § 46-9-302, to set a bail schedule for offenses over which it has original jurisdiction. 41 Mont. Op. Atty. Gen. No. 59, April 17, 1986. The fact that the court has discretion to set appropriate bail amounts and the discretion to accept personal property in lieu of cash, leads me to believe that the court has discretion to set the timing on the payment of any cash bond. This discretion includes the use of a time-pay bail bond system of the type used by the municipal court in Bozeman.

In sum, the time-pay bail bond system used by the municipal court in Bozeman promotes the constitutional and statutory policies of providing bail, except in capital cases. The time-pay bail bond system further complies with the court's obligation under Mont. Code Ann. § 46-9-106, to release a defendant upon reasonable conditions that would ensure the appearance of the defendant and protect the safety of the community and any person. The time-pay bail bond system stands consistent with the law's mandate that the amount of bail shall be "not oppressive," and that the amount shall be "considerate of the financial ability of the accused." Mont. Code Ann. §§ 46-9-301(4) and (6). And finally, the time-pay bail bond system falls within the discretion allotted to the court to accept cash or some other personal property in lieu of cash.

THEREFORE, IT IS MY OPINION:

The Montana Constitution and Montana law authorize a municipal court judge to release a defendant on a time-pay bail bond, defined as a bond in an amount set by the judge to be paid in installments.

Very truly yours,

MIKE McGRATH
Attorney General

mm/bmm/jym